In the High Court of Judicature at Madras

Dated: 23/09/2003

Coram

The Honourable Mr.Justice A.K.RAJAN

W.P.No.13983 of 1998

D.Velazhagan Petitioner

-Vs-

1. The Tamil Nadu Pollution Control Board
rep.by its Chairman
100, Anna Salai
Guindy
Madras.32.
2. The Tamil Nadu Pollution Control Board
rep by its Board Members
100, Anna Salai
Guindy
Madras.32. Respondents

Prayer: Petition filed under Article 226 of the Constitution for the issue of a writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.Balan Haridas

For respondents : Mrs.Rita Chandrasekaran

:O R D E R

The petitioner filed the above writ petition praying to issue a writ of Certiorarified Mandamus to call for the records relating to the order of the first respondent dated 24.02.1996 bearing Proc.No.TNPC Bd/PER/CS/22190/94 as confirmed by the order of the second respondent dated 14.5.1997 bearing ref.No.Proc.No.TNPC Bd/PER/CS/140/96 and quash the same as the same is illegal, arbitrary, and in violation of principles of natural justice and consequently direct the respondents to reinstate the petitioner with full backwges, continuity of service and all other attendant benefits.
2. The facts that are necessary for disposal of the writ petition are as follows:
The petitioner was employed in the services of the respondentsBoard as Junior Environmental Engineer (now redesignated as Assistant Engineer) in the year 1987 and promoted as Assistant Environmental Engineer in the year 1993. While so, he took leave from 09.02.1994 to 05.05 .1994 intermittently.

Thereafter he applied for earned leave for a period of six months from 27.05.1994. It was sanctioned by the Board. But he did not receive any communication from the Board regarding the rejection of leave. As per the Tamil Nadu Government Leave Rules which apply to the Board employees, the petitioner availed earned leave on loss of pay. While so, on 19.01.1995 the Board framed charges against him. The petitioner gave his explanation denying the charges. Thereafter the Board conducted a "farce enquiry" against him. The Enquiry Officer straight away asked the question on the merits of the charges and they were denied by the petitioner. The Board did not let in any evidence and no documents were marked in the enquiry to establish the charges. The enquiry was held only on one day that is on 18.1 0.1995 and concluded on the same day itself. Thereafter the findings of the Enquiry Officer were sent to the petitioner and the petitioner gave his reply for the same, through proper channel. But that was not considered by the disciplinary authority and the disciplinary authority dismissed the petitioner from service by an order dated 24.02.1996. Thereafter he preferred an appeal before the second respondent and the appellate authority rejected the appeal. According to Regulation 8(2) of the Board's (Discipline and Appeal) Regulation, the petitioner was not given any opportunity to defend his case in the enquiry, by producing relevant documents and examining witnesses and the punishment imposed on the petitioner is without substance and is liable to be set aside. Hence,the above writ petition.

3. Counter affidavit has been filed by the first respondent in which it is stated that the petitioner availed leave frequently from February 1994 to May, 1994. He rejoined duty on 26.05.1994 and on 27.05.1994 he was tranferred to Coimbatore. After joining the Board at Coimbatore he availed leave from 30.05.1994 to 03.06.1994, and further extended the leave from 04.06.1994 to 03.07.1994 and from 02.07.1994 to six months. Hence, the respondent issued a memo dated 13.08.1994 calling upon the petitioner to join duty on or before 25.08.1994 failing which disciplinary action would be taken against him. The petitioner filed his reply to the memo on 24.08.1994 stating that his personal work was not completed and moreover he was eligible for six months leave as per Leave Rules. The petitioner's leave was rejected and he was directed to join duty within three days by memo dated 12.09.1994, failing which, he was informed that dis ciplinary action would be taking against him without calling for any explanation. The petitioner neither joined duty nor replied to the said memo dated 12.09.1994 and hence, the Board framed charges against him under Rule 8(2) of the Tamil Nadu Pollution Control Rule (D and A) Rules, 1988 for the dislocation of works by his habitual absence from duty on the pretext of obtaining leave, repectively. Further, the petitioner did not give his reply for the charges. Hence the writ petition is liable to be dismissed.

4. Heard both sides.

5. Learned counsel appearing for the petitioner submitted that as per Regulation 8(2) of the Board's (Discipline and Appeal) Regulation, the enquiry officer should have examined witnesses to prove the charges levelled against the petitioner especially, when it has been denied by the petitioner. The enquiry officer did not examine any witness and no documents were produced. The enqiry Officer took only one day and he came to the conclusion that the charges were proved. Based upon the same, the appellate authority without considering any of the objections raised by the petitioner has rejected the

appeal filed by the petitioner and hence, the impugned order is illegal and liable to be set aside.

6. Learned counsel for the respondents submitted that in the enquiry when the enquiry officer put questions, the petitioner did not answer. The enquiry officer has also recorded the same stating that the petitioner's replies are adamant in nature. Therefore, since there was no denial on the part of the petitioner before the enquiry officer or before the appellate authority, the appellate authority has held that the charges were proved and there is no infirmity in the proceedings.

7.Considering the facts and circumstanes of the case and the fact that in the counter it has been specifically stated that the petitioner was granted leave and though extended, the Board rejected and the petitioner was directed to join duty within three days from the date of receipt of the memo. But the memo has not been produced before the enquiry Officer and there is no such document to hold that he has directd to join duty within the stipulted time. Before the enquiry officer no witnesse was examined on behalf of the petitioner or the respondents. Rule 8(2) of the of the Tamil Nadu Pollution control Rule (D and A) Rules, 1988 reads as follows:

" In every case where it is proposed to impose on a member of a service any of the penalties mentioend in items (3),(7)(8) and (9) of regulation 3, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated in the person charged together with a statement of the allegations on which each charge is based and of any other circumstances on which it is proposed to take into consideration in passing orders on the case. The person so charged shall be, required, within a reasonable time, to put in a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is denied by the person charged or is directed by the authority concerned. At that inquiry, oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to ahve such witnesses called, as he may wish, provided that the officer condcuting the inquiry may for special and sufficient reason to be recorded in writing refuse to call a witness. Whether or not the person charged desired or had an oral inquiry he shall be heard i person at any stage if he so desires before passing of final orders. A report of the inquiry or personal hearing as the case may be shall be prepared by the authority holding the inquiry or personal hearing.

Whether or not such authority is competent to impose the penalty, such report shall contain sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof."

8. From the perusal of the above Rules, it is seen that when the charges were denied by the delinquent officer it is the duty of the enquiry officer to adduce evidence to prove such charges. The charges are denied by the incumbent. Therefore, all the charges should have been proved before the enquiry officer by adducing evidence. But there is no evidence adduced either by way of oral or documentary evidence. Therefore, the conclusion arrived at by the enuiry officer is not supported by any oral evidence and hence the finding is not in accordance with the Rules. The second show cause notice was given to the petitioner as per Rules 8(2) of the Rules. Therefore, it is in

violations of the rules and is liable to be set aside and hence, set aside. 9. Considering the facts that the petitioner was frequently availing leave and he disobeyed the order to join duty as per the second memo, the matter is remitted back for fresh enquiry by the authorities concerned and pass proper orders in accordance with the laws. 10. Further, it is made clear that the petitioner shall co-operate with the enquiry officer. If the petitioner absents himself or refuse to co-operate with the enquiry officer in the enquiry proceedings, the enquiry officer can proceed with the enquiry ex parte and pass orders in accordance with law. The enquiry officer shall complete the enquiry within a Periode of two moths from the date of receipt of a copy of this order, and give his report as per Rules 11 of the said Rules.
Rule 11 is as follows:
"Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of a service is set aside or declared or rendered void in consequence of or by a decisin of a Court of law and the disciplinary authority, on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, such member of service shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain udner suspension until further orders."
11. The person is deemed to be under suspension from the date of original order till the final order is passed. The respondents Board is directed to act in accordance with Rule 8(2) and 11 of the Tamil Nadu Pollution control Board Rule (D and A) Rules, 1988, and pass orders, within a period of one month from the date of receipt of a copy of this order.
In the result, the writ petition is ordered accordingly.

Index : Yes
Internet : Yes

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To

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